

So Ordered.



Patina C Williams

**Patricia C. Williams
Bankruptcy Judge**

Dated: November 16th, 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

LLS AMERICA, LLC,

Debtor.

No. 09-06194-PCW11

BRUCE P. KRIEGMAN, solely in
his capacity as court-appointed
Chapter 11 Trustee for LLS America
LLC,

Plaintiff.

Adv. No. 11-80110-PCW

VS.

TYLER FOERSTNER,

Defendant.

MEMORANDUM DECISION RE:
DEFENDANT TYLER FOERSTNER'S
MOTION TO DISMISS (ECF NO. 10)

This adversary is one of hundreds commenced by the trustee of the LLS America, LLC (“LLS America”) bankruptcy estate, which adversaries seek, pursuant to 11 U.S.C. § 548 and other causes of action, to recover money paid by the debtor to certain lenders or investors as part of an alleged Ponzi scheme conducted by the debtor. Defendant Tyler Foerstner filed a motion to dismiss on February 16, 2012, ECF No. 10.

In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

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1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
2 raised in the subject motion are the same as those raised in the Previous Decision. Many
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By affidavit of Curtis Frye (ECF No. 17), the trustee presented evidence in this
5 case that the defendant loaned or invested \$96,000 (CAN) and three (3) promissory
6 notes were issued. In 239 distributions occurring from November 2001 to December
7 2008, the defendant received \$643,569.02 (CAN). According to the trustee, the
8 defendant filed a proof of claim in the amount of \$249,741.65 in the underlying LLS
9 America case. By declaration (ECF No. 12), the defendant presented evidence that he
10 resides in Canada, rarely travels to the United States, and each promissory note listed a
11 Canadian entity as borrower with distributions primarily made from Canadian entities.
12 The declaration further states that the loans or investments were solicited in Canada, but
13 no details were provided regarding the manner of solicitation.

14 The grounds for dismissal in the subject motion are: (1) ineffective service of
15 process; (2) improper extraterritorial application of United States bankruptcy law; and
16 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
17 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
18 forth in the Previous Decision and is applicable to the subject motion.

19 As in the Previous Decision, one basis for the request to dismiss is the lack of
20 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of
21 claim is a consent to jurisdiction to adjudicate that claim and the related action brought
22 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding
23 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the
24 Previous Decision and is applicable to the subject motion, which is **DENIED**. Counsel
25 for the defendant shall submit an order consistent with this decision.

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///END OF MEMORANDUM DECISION///

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